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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-seventh session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 18 August 1995, at 10 a.m.

Chairman: Mr. MAXIM

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GE.95-13788 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS

1. The CHAIRMAN announced that the Sub-Commission would vote on the draft resolutions submitted under agenda items 6, 5, 17, 18, 20, 15, 16, 19, 13 and 21 in that order. He reminded the Sub-Commission of the procedure for consideration and action on draft resolutions and draft decisions.

2. After a procedural discussion in which Mr. YIMER and Mrs. PALLEY took part, the CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission wished to dispense with introductions of resolutions to the extent possible.

3. It was so decided.

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued)

Proposal for a draft decision on hostage-taking and murder of hostages

4. Mr. EIDE said that, in view of the events currently taking place in Jammu and Kashmir, he wished to introduce a draft decision on hostage taking and murder of hostages. The text would read as follows:

"Hostage-taking and murder of hostages

The Sub-Commission is horrified by the murder of hostages by violent terrorist or guerilla groups, including most recently the brutal murder by the Al Faran group in Jammu and Kashmir of the Norwegian, Mr. Hans Christian Ostrø, and expresses its condolences to the bereaved families of Mr. Ostrø and other victims of such violations.

The Sub-Commission points out that the taking of hostages constitutes a blatant violation of minimum humanitarian standards applicable to all parties and in all situations and that the use of such contemptible and barbaric methods for political gains can only serve to discredit whatever cause the perpetrators claim to be pursuing.

Alarmed by the threat to kill four other hostages - one American, one German and two Britons - held by the Al Faran group, and the threat to kill two Italians in the hands of armed guerilla groups in Colombia, the Sub-Commission demands that persons still held hostage are immediately and unconditionally set free by their captors, and that every relevant authority does everything in their power to apprehend and prosecute persons responsible for such inhuman acts."

5. He proposed that, if all members agreed, the draft decision should be adopted by consensus. Otherwise he would withdraw his proposal.

6. Mr. GUISSE said that the text mentioned the case of an individual and that, in accordance with past practice, the Sub-Commission could not adopt such a text by consensus unless all names were deleted.

7. The CHAIRMAN, supported by Mrs. MBONU and Mr. EIDE, said that it would be more appropriate to categorize the text as a statement rather than as a draft decision.

8. Mrs. WARZAZI said that the purpose of the text was not clear. The actions described should be condemned; the word "condemned" had not however been used in the text. The statement should declare that the Sub-Commission condemned those actions.

9. Mr. JOINET said that the Chairman might make a statement to convey the sentiment of the Sub-Commission.

10. The CHAIRMAN asked whether members wished to condemn the actions described or to note them with horror.

11. Mr. JOINET said that "condemned" would be more appropriate. Under existing procedures it would be possible for the Chairman to convey that sentiment in a statement.

12. Mr. GUISSE considered that the Sub-Commission could not go further than saying that it was horrified.

13. Mr. YIMER said that such a statement must contain a condemnation.

14. Mr. LINDGREN ALVES said that the Sub-Commission should adopt a draft resolution unanimously with the following amendment: that, in the third paragraph, after the words "the Sub-Commission" the words "condemns any kind of hostage taking and" should be added before "demands".

15. Following a brief procedural discussion in which Mr. YIMER, Mrs. WARZAZI, Mr. GUISSE and Mr. ALFONSO MARTINEZ took part, the CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission wished to adopt, in the form of a statement by the CHAIRMAN, the text proposed by Mr. Eide, as amended by Mr. Lindgren Alves.

16. It was so decided.

Draft resolution E/CN.4/Sub.2/1995/L.2

17. Mrs. CHAVEZ said that she would like to make one small change in the text in order to make it consistent with similar resolutions adopted by other United Nations bodies. She proposed that the last phrase of operative paragraph 6 of the draft resolution reading, "which constitutes a positive contribution to the protection of human rights in the Middle East." should be deleted.

18. Mr. EL-HAJJE said that he had informed the secretariat a few days earlier that he was opposed to the draft resolution.

19. Draft resolution E/CN.4/Sub.2/1995/L.2, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1995/L.4

20. Mr. BOSSUYT said that the sponsors had proposed the draft resolution to enable the Sub-Commission to address the situation of human rights in Iraq, which remained a matter of serious concern. He wished to stress that they were also aware of the problems caused by the embargo imposed against Iraq and he drew attention to the eighth preambular paragraph in which the Sub-Commission would express its concern at the accumulated information and reports confirming the serious deterioration of the health and nutritional situation from which the majority of citizens with limited income suffered as victims of the international embargo, as well as by economic policy decisions depriving part of the national territory of supplies of medicines and foodstuffs. Moreover the seventh preambular paragraph would draw attention to the fact that Security Council resolution 986 (1995), which had been adopted unanimously, authorized the Government of Iraq to put additional quantities of its oil on the market to meet the basic health and nutritional needs of the Iraqi people.

21. He hoped that those provisions would meet the concerns of members and that the draft resolution would be adopted.

22. The CHAIRMAN announced that Mr. Joinet had become a sponsor.

23. Mr. JOINET said that he would have liked the paragraphs on the harmful impact of the embargo on the civilian population to be stronger. At the beginning of the session, he had spoken on the question of embargoes but since there was another resolution on the harmful impact of embargoes in general he was prepared to sponsor the present draft resolution.

24. Mr. ALFONSO MARTINEZ, supported by Mr. RAMADHANE, requested a vote by secret ballot on the draft resolution.

25. Mrs. PALLEY said that she would move that all items under item 6 should be voted on by secret ballot if there was no consensus, unless that was already the practice of the Sub-Commission.

26. Mr. ALFONSO MARTINEZ said that the older members of the Sub-Commission would know his position on the use of a vote by secret ballot on items under agenda items 6 and 9. Since the majority wished to maintain that type of voting he had no objection to a vote by secret ballot but would like the record to show that his position was that such a vote should not be automatic. There should be a vote by secret ballot on all draft resolutions under the item in order to protect the so-called impartiality and independence of experts.

27. The CHAIRMAN, replying to a point raised by Mr. CHERNICHENKO, said that Mrs. Palley had been referring only to resolutions under item 6.

28. Mr. ALFONSO MARTINEZ, on a point of clarification regarding Mrs. Palley's statement explained that the tradition of the Sub-Commission was that, whenever a request for a vote by secret ballot was made, it applied not only to substantive proposals but also to all procedural matters related to the draft resolution.

29. Mr. JOINET said that he would like to reserve his position on the question. He had always interpreted the position of the Economic and Social Council as allowing for a vote by secret ballot when a country was criticized in a resolution. He would like his position to be reflected in the summary record.

30. The CHAIRMAN said that the observer for Iraq would like to make a statement before the vote.

31. Mr. SALMAN (Observer for Iraq) said that when the Sub-Commission considered the situation of human rights in different States it had always taken into account developments and possible negative effects in the country concerned so that the resolution would be credible. Resolutions should deal with problems in an order of priority and study the reasons for those problems and their remedies.

32. His country was experiencing serious problems as a result of an aggressive campaign by certain countries against Iraq. All were aware of the situation in the north of Iraq and the attempts of those countries to separate that part of Iraq from the rest of the country. The internal war with the Kurds had produced 3,000 innocent victims and it could well be imagined what would happen if the same chaos spread throughout Iraq. He left it to the Sub-Commission to make its own judgement on the situation and to assess the measures taken by the Government to deal with it. In the circumstances it would be impossible to believe that the human rights situation in those areas could be normal.

33. The tragic situation confronting the Iraqi people was the responsibility of those countries which continued to impose the embargo and blockade that had complicated the problems of Iraq still further. His Government considered that it was important that the Sub-Commission had abandoned the politicization of its discussions; the Sub-Commission was after all an independent body with independent expert members.

34. The draft resolution under consideration reported the same accusations by States hostile to Iraq and which had engaged in campaigns against Iraq in order to justify the embargo imposed against the Iraqi people for the past five years, contrary to all international instruments, and in flagrant violation of human rights.

35. The draft resolution called upon Iraq to halt the bombing of the marshes. The allegations made were not correct. There was no internal blockade because the regions that were under the control of the Iraqi Government, including the south, received food rations under a coupon system which was just and fair. The real problem in Iraq was the result of the blockade and embargo.

36. The north of Iraq was experiencing an exceptional situation. That area was not under the control of the Government which was not therefore responsible for the killing and looting occurring there. On several occasions the Government has said that it was ready to enter into a dialogue with the Kurdish leaders in order to achieve a model agreement for autonomy.

37. Concerning the draining of the marshes, the Government had already said that those allegations were not true. All that was happening there was land reform designed to increase the area of cultivable land. The various projects had started at the end of the 1950s in cooperation with Brazilian, German and Russian companies. An official document had been submitted by the Government of Iraq to the General Assembly (A/C.3/49/24) on the issue.

38. The main aim of the Security Council resolutions had nothing to do with the humanitarian aspects as it had been to deprive the people of Iraq of sovereignty over their national resources, particularly oil. It also constituted interference in the internal affairs of Iraq with a view to making Iraq a refugee camp rather than a State.

39. The draft resolution totally ignored the measures taken by Iraq, such as decisions of amnesty for political prisoners as well as a range of other procedures and measures. Iraq was entitled to ask what the purpose of such an attitude could be and why other countries were praised for much less important measures.

40. Double standards applied when the interests of major Powers were involved. In that connection his delegation had noted the terms of paragraph 10 of the draft resolution. His delegation believed that the falsifications and measures taken had been encouraged by certain forces in order to prolong the suffering of the Iraqi people.

41. Iraq had informed the United Nations High Commissioner for Human Rights, the Centre for Human Rights and the special rapporteurs that it was ready to cooperate, on an equitable and objective basis, in providing any information requested.

42. It appreciated the Sub-Commission's concern at the humanitarian situation in his country. Iraq's efforts to meet the needs of its people were well known.

43. The draft resolution under consideration was a clear interference in the internal affairs of Iraq. He called on the Sub-Commission to avoid following a policy of double standards and to reject the draft resolution.

44. A vote was taken by secret ballot.

45. At the invitation of the Chairman, Mrs. Mbonu and Mr. Lindgren Alves acted as tellers.

46. The draft resolution was adopted by 15 votes to 5, with 4 abstentions.

Proposal for a draft decision on the humanitarian situation in Iraq

47. Mrs. WARZAZI said that she wished to propose a draft decision, which she hoped would be adopted by consensus. The text read as follows:

"Humanitarian situation in Iraq

The Sub-Commission, recalling its resolution 1994/111, affirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the relevant provisions of the Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto, recalling also the Declaration of Minimum Humanitarian Standards contained in document E/CN.4/Sub.2/1991/55, deeply concerned about the reports on the serious consequences which the embargo imposed on Iraq for the past five years is having on the entire civilian population in Iraq and, in particular, on children, women and the most underprivileged population sectors, decides, without a vote, to appeal once again to the international community as a whole and to all Governments, including that of Iraq, to facilitate the supply of food and medicines to the civilian population."

48. The draft decision on the humanitarian situation in Iraq was adopted by consensus.

Draft resolution E/CN.4/Sub.2/1995/L.5

49. Mr. BOSSUYT requested that consideration of the draft resolution should be deferred until the next meeting, to allow consultations to continue.

50. It was so decided.

Draft resolution E/CN.4/Sub.2/1995/L.6

51. Mr. EL-HAJJE, reading out a minor drafting change in the last preambular paragraph of the draft resolution, noted that the same draft resolution had been adopted the previous year by an overwhelming majority and urged its adoption since the situation in the Palestinian and other occupied Arab territories warranted it.

52. Mrs. CHAVEZ said that the draft resolution lacked balance because it did not reflect the new realities concerning who was in authority in the Palestinian and other Arab territories on the Gaza Strip and Jericho Area since the signing of the Agreement and on the question of allegations of human rights abuses by the Palestinian authority. Accordingly, she wished to propose new ninth and tenth preambular paragraphs and a new operative paragraph 8, the text of which had been circulated to members. She hoped the sponsors would agree to them.

53. Mr. EL-HAJJE requested that consideration of the draft resolution should be deferred to allow time for consultations among the sponsors and other members of the Sub-Commission.

54. It was so decided.

Draft resolution E/CN.4/Sub.2/1995/L.7

55. Mr. EL-HAJJE, introducing the draft resolution, said that because of the discrimination in Kosovo, it had been thought appropriate to draft a resolution to put pressure on the authorities of the region.

56. Mr. CHERNICHENKO observed that the amendment to the draft resolution which he had submitted the previous day in document E/CN.4/Sub.2/1995/L.42 was not reflected in the text.

57. The CHAIRMAN said that the Secretariat had not yet been able to incorporate them.

58. He said that if there was no objection, he would take it that the Sub-Commission would wish to defer consideration of the draft resolution.

59. It was so decided.

Draft resolution E/CN.4/Sub.2/1995/L.8/Rev.1

60. Mrs. PALLEY said that she had modified the text of the draft resolution to meet the concerns of members. First, apart from a reference to Burundi, there were no States expressly named in the text. The reference to thematic rapporteurs, of course, indirectly referred to all countries and to some in particular. Secondly, there were now no references to country rapporteurs as such references might harm the future work of special rapporteurs on countries. Likewise there was no reference to the Working Group on Arbitrary Disappearances. Those deletions had also been made to meet any objections about the legal competence or the procedures adopted by such rapporteurs or the Working Group. Since the thematic rapporteurs produced public documents for public use, she thought it right to quote from them. Thirdly, because of their workload, not all members were able to read the special rapporteurs' reports and she therefore did not feel it right to take on trust the word of one Sub-Commission member that there were correlations "of a high degree" between mention of a State (for the reasons listed in the original text) and allegations made against the same State under item 6. She could well understand that members wanted to study the matter themselves, before reaching such a conclusion. Accordingly, she had modified the text to "apparent" correlations. The word "correlations" merely meant that there were a series of facts which bore some relationship to each other. Whether there were in fact correlations, and what that meant, if it was indeed the case, was something she hoped the Sub-Commission would examine next year, preferably in relation to its methods of work, possibly under agenda item 3. If the Sub-Commission was to examine at its next session whether there were indeed correlations and whether the special rapporteurs' reports could help it in its task, it needed a resolution to that effect. It needed to ensure that each member had copies of the special rapporteurs' reports for 1995 and for early 1996 and its own report on the current session. And it needed them in good time, so that they could be read. It would also need a report by the Secretary-General, so that scientifically prepared material from the Centre was in front of it. If the Sub-Commission said that it would merely place the question on next year's agenda, it would not have the necessary material for an informed discussion and would have to postpone it until 1997, as a result

of which the Sub-Commission would receive no scientific assistance, in practice, until 1998 on how to tackle item 6. It was because she hoped that the Sub-Commission could agree to move, after study, to something less arbitrary in future that she had changed the operative paragraph. If the revised resolution was adopted, the Sub-Commission would now decide that at its forty-eighth session it would examine whether there were correlations and whether the special rapporteurs' reports were useful in evaluating allegations of violations of human rights and the secretariat could do the necessary work in the interim period.

61. She hoped that members were aware that the Commission had, since March 1994, been concerning itself with the conclusions and recommendations of the special rapporteurs to enable further discussion of their implementation. On 4 March 1944, the Commission had asked the Secretary-General to report on that, and he had done so in document E/CN.4/1995/47. If members looked at that report, they would see that much of the preamble to her proposed resolution appeared, but in a far more detailed form, in that report. The Commission, in consequence, had sought to strengthen the special rapporteurial system; had commended Governments which had invited special rapporteurs to visit their countries; had encouraged Governments to cooperate more closely; requested rapporteurial comment on problems of responsiveness; and had recalled Part II, paragraph 88, of the Vienna Declaration, recommending the study of the various thematic mechanisms and procedures with a view to providing greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures.

62. She wished to emphasize that reports were not holy documents, which could not be questioned. They also required constant updating. States had drawn her attention to errors, to doubts about the procedures adopted and to developments between the publication of the reports early in 1995 and the Sub-Commission's August session. Consequently, she felt that she must put the record straight, because the original draft resolution was an official document. Thus, Pakistan had that month finalized an invitation to the Special Rapporteur on the question of torture; in March 1995 Algeria had abolished special courts to deal with criminal offences relevant to its emergency; Israel investigated every incident involving loss of life and there was a very active ministerial sub-committee which supervised and reviewed the activities and methods of the General Security Service; Algeria had stated that it investigated all incidents involving activities by the State Security Services; and Colombia was fully cooperating with all the special rapporteurs and its Government was tackling torture and actively investigating misconduct by members of the Security Forces.

63. Her colleague, Mrs. Forero Ucros, had said that it was wrong to lump different countries, with different circumstances, in the same basket. That comment had prompted her own decision to delete the earlier specific references to countries. Only a long and sophisticated differentiation, dealing separately with each State, was really appropriate. Some States believed that she was "gunning for them". In fact, it was merely a question of listing States mentioned on certain bases by the special rapporteurs early in 1995 and whose names came up again under item 6. The reason for silence in respect of other States was that they did not meet both criteria. Of course,

some States could appropriately be mentioned under item 10 or item 5 (a). At all events, the revised resolution did not name States, apart from Burundi, and could not offend them.

64. She hoped that members would look with open minds at the new text. It was that revised text that counted and the useful work it could lead to, work in line with the guidance given by the Commission and the Vienna Declaration. It would be a pity if a "take no action" motion were now tabled which would effectively hold up practical results for two years simply because the old text was offensive to some members and States.

65. Mr. JOINET said that he thought it was an excellent idea to delete references to the special rapporteurs and the working groups from the draft resolution, for the reasons given. That kind of thinking could only help the special rapporteurs to fulfil the mandate they had been given to strengthen follow-up.

66. However, he rather regretted the elimination of specific references to countries: at the United Nations not much got done unless names were named; it was often difficult otherwise to secure the cooperation of States. On the other hand, the same country could well be cooperative in some respects but not in others, and it should be cited on both counts. Perhaps all favourable references could be put in one section of the draft resolution and all specific criticisms in another.

67. In any case, he believed the praise or censure should be awarded more scientifically: the sponsor of the draft resolution should consult with the special rapporteurs and the chairmen of the working groups after their annual coordination meeting held during the session of the Commission, and then draft her text on that basis.

68. He therefore asked Mrs. Palley to return to the original version of her text; and to defer submission of her revised text, which certainly went in the right direction, until after consulting with the special rapporteurs once they had held their coordination meeting.

69. Mr. FAN Guoxiang said that he had trouble with both versions of the text. The core of the draft resolution in either form was to acknowledge and try to establish a linkage between the special rapporteurs and the Sub-Commission in the treatment of agenda item 6. That was unacceptable for him because, while he respected the work of the special rapporteurs, the Sub-Commission's work was distinct. The correlation idea, however qualified, was irrelevant and dangerous if applied to item 6.

70. He agreed that the revised version, which named no names, was better than the first draft, where 35 States, the majority of them developing countries, had been named very selectively. But even the revised draft, which left open the possibility of future name-calling, was a sword of Damocles hanging over any country should new standards be set.

71. For example, while specific references to individual countries had been removed from the eleventh and twelfth preambular paragraphs, the basic idea remained unchanged, and the possibility of singling out individual countries

at a later date was not ruled out. For those reasons, he was against the draft resolution and proposed that the decision on whether or not to adopt it should be taken by secret ballot.

72. Mrs. PALLEY said that she did not understand Mr. Joinet's proposal as meaning that the matter could be studied next year. She understood him to be saying that the special rapporteurs should hold discussions with a view to submitting a document to the Sub-Commission and then the Sub-Commission would study the matter, not in 1996 but in 1997. All that she was asking was that the matter should be studied by the Sub-Commission next year with scientific material in front of it. Otherwise, she would be obliged to insist on a vote.

73. Mr. JOINET said that he was favourable to the work done by Mrs. Palley and would try to get it included on the agenda of the coordination meeting of the special rapporteurs.

74. Mrs. CHAVEZ proposed that discussion on the draft resolution should be deferred and that the Sub-Commission should ask Mr. Joinet to put forward a draft decision deferring discussion of the draft resolution until the next session, when it could be considered after due preparation under a different agenda item.

75. Mr. FAN Guoxiang said that if Mrs. Palley insisted on a vote, then the expert members should be allowed to make their views clear.

76. Mrs. GWANMESIA said that in her opinion, the proposed document was frivolous and even voting on it would set a very bad precedent. She objected to the assumption implicit in the text that none of the 185 Member States of the United Nations were making any significant attempts to respect human rights. The fact that Mrs. Palley had watered down the text by removing references to specific countries suggested that she was not entirely sure of her ground.

77. Mr. CHERNICHENKO, supported by Mr. GUISSE, pointed out that Mr. Joinet's proposal to defer discussion of the document until the next session was a procedural proposal and therefore took precedence over any others.

78. Mrs. MBONU said that the draft resolution should be rejected. The general approach, which appeared to be to "put countries in the dock", was not a healthy one. The Sub-Commission was not a court and could only achieve progress by persuading States to cooperate. Although the present document in its revised version mentioned only one country by name, it was still highly selective and reflected a willingness to play down human rights abuses in the wealthy countries which made larger contributions to the United Nations. She recalled that during the joint meeting with the Committee on the Elimination of Racial Discrimination (CERD), Mrs. Palley had even appeared to suggest that certain comments made in the report of the Special Rapporteur on the United States might be counter-productive, given the large financial contribution made by that country.

79. Mr. EIDE said that the draft resolution presented many difficulties, particularly in the notion of "correlation" which appeared rather unsystematic and not very useful. He agreed with the proposal that the matter should be deferred, to allow Mr. Joinet to draw up a proposal considering the uses which could be made of special rapporteurs' reports in the assessment of allegations of human rights violations and of improvements in human rights performances, for further discussion at the Sub-Commission's next session.

80. Mr. ALFONSO MARTINEZ agreed with Mrs. Mbonu that the draft resolution even in its revised form was far too selective in its approach and gave too much weight to the conclusions of the thematic rapporteurs, given that other sources of information were available to the Sub-Commission. Another sticking point was the reference in the document to the failure of Governments to cooperate with the special rapporteurs in failing, for example, to finalize invitations to special rapporteurs to visit the countries concerned. As far as he was aware, States were under no legal obligation to extend such invitations. Given those shortcomings, as well as those mentioned by other speakers, he would prefer that the decision be taken now to drop the draft resolution rather than defer discussion of it to the next session.

81. Mrs. WARZAZI said that the draft resolution appeared to imply that all human rights violations were reflected in the reports produced by the special rapporteurs. Since the special rapporteurs concentrated almost exclusively on the developing countries, the document was open to the charge of bias. She hoped that any document which Mr. Joinet might eventually submit would take account of her concern.

82. Mrs. PALLEY said that on the understanding that Mr. Joinet would produce a new draft decision to the effect that the matter would be discussed by the Sub-Commission at its next session on the basis of all the available material, she would be willing to withdraw the draft resolution.

83. With regard to the statement by Mrs. Mbonu, she agreed that she had been concerned at the possible consequences of certain remarks made in a report on the United States. However, Mrs. Mbonu had been quite mistaken in her interpretation of her motives for doing so. She also found that Mrs. Gwanmesia's use of the term "frivolous" somewhat off target: she was passionately committed to human rights, although also very much aware of the need to avoid prejudging countries or giving undue offence.

84. Mr. JOINET said that he would consult Mrs. Palley before the end of the present session on a draft decision to the effect that discussion of the matter would be resumed under a different agenda item during the next session.

85. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission had concluded its discussion of draft resolution E/CN.4/Sub.2/1995/L.8/Rev.1.

86. It was so decided.

Situation of human rights in Turkey (agenda item 6) (continued)

Draft resolution E/CN.4/Sub.2/1995/L.9

87. Mrs. CHAVEZ said that the draft resolution appeared to have been overtaken by certain positive developments, including an invitation to the Special Rapporteur on the right to freedom of opinion and expression to visit Turkey and recent statements made publicly by the Prime Minister to the effect that she would be tabling amendments to the Anti-Terrorism Law in the autumn of 1995. In the circumstances, she believed that the draft resolution might well be withdrawn.

88. Mr. JOINET agreed, and proposed that the Sub-Commission should adopt the following draft decision to take into account the recent positive developments:

> "The Sub-Commission, taking note of the positive initiatives undertaken by the Turkish authorities in the field of freedom of expression, decides to postpone the question until its next session in expectation of the implementation of those measures."

89. Mrs. PALLEY said that, because she had been professionally involved as a constitutional adviser to the Government of an island, 36.4 per cent of which had been occupied by Turkey for the past 21 years, it would be inappropriate for her to take part in any substantive decision-making in respect of Turkey.

90. Mrs. WARZAZI said that the draft resolution raised certain important questions. The rights of journalists were violated in many countries, so why was there a need for a draft resolution devoted specifically to Turkey? A general text, expressing the Sub-Commission's concern at violations of journalists' rights wherever they occurred, would have been preferable. For that reason alone, she would be pleased if the document were withdrawn.

91. On the other hand, she was not in favour of the draft decision proposed by Mr. Joinet. It appeared to take no account of the difficulties faced by a woman Prime Minister in introducing legislative amendments in an assembly dominated by men, and might become, in the words of Mr. Fan, a "sword of Damocles" hanging over the Turkish Government. More consideration needed to be given to positive ways of encouraging progress and acknowledging the advances which had already been made.

92. Mr. CHERNICHENKO said that the present discussion once again raised an important procedural issue: if the text were withdrawn by one of the co-sponsors, which implied prior consultation with the other co-sponsors, a new draft document could not be proposed on the same subject.

93. Mr. ALI KHAN said that he, too, would like the draft resolution to be withdrawn, and withdrew his sponsorship. He was against any new text of the kind proposed by Mr. Joinet, and suggested that the discussion of the matter should now be closed.

94. Mrs. KOUFA said that she would not object to the withdrawal of the draft resolution if it was replaced by new text.

95. Mr. YIMER said that, since the draft resolution had now been withdrawn, the members should now proceed to vote on Mr. Joinet's proposed draft decision.

96. Mr. ULUÇEVIC (Observer for Turkey) said that the adoption by the Sub-Commission of any draft resolution or draft decision regarding the human rights situation in his country would be unwarranted because an ambitious programme of democratization was under way and had already produced concrete results with which members of the Sub-Commission were familiar. Common sense, integrity and professionalism would no doubt induce members to consider the matter in the light of the developments that had taken place when the draft resolution had been in the course of preparation.

97. A vote was taken by secret ballot.

98. At the invitation of the Chairman, Mr. Boutkevitch and Mr. Ramadhane acted as tellers.

99. The draft decision was adopted by 11 votes to 9, with 2 abstentions.

Draft resolution E/CN.4/Sub.2/1995/L.12

100. Mrs. CHAVEZ informed the Sub-Commission that the sponsors wished to introduce a number of minor amendments. A new fifth preambular paragraph should be inserted, reading "Welcoming the decision of the Government of Indonesia to grant clemency to three 1965 political prisoners and to abolish the 'ex-tapol' code on identity cards of former 1965 prisoners". Subsequent preambular paragraphs should be renumbered consequentially. In the new sixth preambular paragraph the word "alleged" should be inserted before the word "killing". In the new seventh preambular paragraph the words "continuing interference" should be replaced by the words "allegations of continued interference". In the new ninth preambular paragraph the words "for defamation of the head of State" should be replaced by the words "expressing views critical of the Government". At the end of the final preambular paragraph the words "or the International Covenant on Civil and Political Rights" should be added. Finally, the words "and another 19 who are serving life sentences and hopes that they will be granted amnesty" should be added at the end of operative paragraph 1.

101. Mrs. MBONO said that there was a basic inconsistency between the second preambular paragraph, which mentioned the visits to Indonesia of two Special Rapporteurs, and operative paragraph 5, which recommended that the Commission on Human Rights should urge the Government of Indonesia to invite two further Special Rapporteurs to visit the country. The Sub-Commission had no coercive powers; it could only facilitate, not prosecute. If the Government of Indonesia was cooperating, such cooperation should be welcomed, as had happened in the case of another country.

102. Mrs. GWANMESIA said that Mrs. Chavez's amendments were of little consequence. The new seventh, eighth and ninth preambular paragraphs were all concerned with freedom of expression. In that connection she referred members to article 19, paragraph 3, of the International Covenant on Civil and Political Rights, which permitted restrictions on freedom of expression, and

to article 30 of the Universal Declaration of Human Rights. The adoption of the draft decision by the Sub-Commission would be tantamount to denying the provisions of article 19, paragraph 3, of the International Covenant. In any case, a vote should be taken.

103. Mrs. CHAVEZ said that she had no objection to a vote being taken. However, if the Sub-Commission were to accept Mrs. Gwanmesia's argument, it might as well cease to exist. Restrictions on freedom of expression were always defended on the ground that they were necessary for State security. Ever since she had served on it, the Sub-Commission had received more information on human rights abuses in Indonesia than in virtually any other country. Responsible NGOs such as Amnesty International continued to provide such information. The Sub-Commission simply could not accept the view that freedom of expression had to be limited in order to protect the State.

104. Mr. EIDE said that the limitations on freedom of expression provided for in article 19, paragraph 3, of the International Covenant on Civil and Political Rights had to be seen as being necessary in the context of a democratic society. Mrs. Gwanmesia would find it hard to prove that such was the case in the present instance. Article 30 of the Universal Declaration of Human Rights referred to situations in which human rights might be used in order to create a State in which human rights no longer existed, as had been done by the Nazis in 1932. The restrictions on freedom of expression in Indonesia went beyond what was needed in a democratic society.

105. Mrs. GWANMESIA, referring to the new tenth preambular paragraph, asked why the Sub-Commission should criticize a State for not ratifying United Nations conventions. Moreover, article 29 of the Universal Declaration of Human Rights made it clear that everyone had duties to a community and that the exercise of rights and freedoms should be subject to certain limitations. The persons mentioned in the ninth preambular paragraph either had or had not committed a criminal offence or a civil tort. The issue could be settled only in a court of law.

106. Mr. JOINET said that freedoms could be restricted provided the principle of proportionality was observed - in other words, provided the intensity of the measure adopted was in keeping with the intensity of the danger that had arisen. The draft resolution indicated that the measures taken in Indonesia were excessive in relation to the situation.

107. The Sub-Commission's mandate to request a State to ratify a human rights instrument derived from its biennial agenda item entitled "Encouragement of the universal acceptance of human rights instruments".

108. Mrs. WARZAZI said that in the new seventh preambular paragraph it was incongruous to state as a fact, after using the world "allegations", that there had been loss of human life.

109. Mrs. CHAVEZ explained that the word "allegations" referred only to "continued interference". It was known that loss of human life had taken place.

110. Mr. TARMIDZI (Observer for Indonesia) recalled that in 1994 a draft resolution on the situation in Indonesia had been rejected by the Sub-Commission. The draft resolution now before it was based on a biased approach not in keeping with the principles of universality, objectivity and non-selectivity required by the Vienna Declaration and Programme of Action. Its adoption would harm the work of the Sub-Commission and jeopardize the cause of human rights. Like its predecessor, it included paragraphs that were either outdated, irrelevant or formulated on the basis of massive misinformation, substantial errors and politicization. For example, all the reports mentioned in the second preambular paragraph had been presented to the relevant sessions of the Commission on Human Rights, and most of their contents had been overtaken by events.

111. Another example was the sixth preambular paragraph. The Government had never interfered in the internal affairs of officially recognized religions such as the Lutheran churches of northern Sumatra. Since some members of the congregation had been killed in a brawl between various factions, the Government, contrary to the allegations contained in the draft resolution, had decided to protect life and to uphold law and order. Moreover, the paragraphs concerning the allegations of continuing threats to the right of life of five political prisoners involved in the 1965 coup attempt and the use of excessive force by the "security apparatus" against civilians failed to present the perspective that was evolving in Indonesia. The comparison with Nazi atrocities made by a member was a gross distortion. Indeed, although the intended target of the draft resolution was Indonesia, the first actual victim was truth, because the text resorted to the manipulation and politicization of facts. The second victim was nothing but the credibility of the Sub-Commission for, by engaging in such a political manoeuvre, it compromised the goal of promoting and protecting all human rights. His delegation hoped that the Sub-Commission would decisively reject the draft resolution, as amended.

112. Mr. EIDE said that he had not compared the Government of Indonesia with the Nazis. There was no similarity between the two situations.

113. Mrs. PALLEY observed Mr. Eide had merely illustrated a point of law for the benefit of Mrs. Gwanmesia.

114. Mr. JOINET requested that a vote should be taken at once and suggested that in general a vote should always be taken immediately after the observer for the Government concerned had concluded his statement.

115. A vote was taken by secret ballot.

116. At the invitation of the Chairman, Mr. El-Hajjé and Mr. Yimer acted as tellers.

117. The draft resolution, as amended, was rejected by 14 votes to 9, with no abstentions.

The meeting rose at 1.05 p.m.